UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

LENZ & RIECKER

and **Case 22-CA-24921**

LOCAL 31, GRAPHIC COMMUNICATIONS INTERNATIONAL UNION

***Dorothy Foley, Esq.*, for the General Counsel**
***Jacqueline Greenberg, Esq., (Duane Morris, LLP)*, of Newark, New Jersey, for the Respondent**
***Paul A. Montalbano, Esq., (Cohen, Leder, Montalbano & Grossman)*, of Kenilworth, New Jersey, for the Charging Party**

DECISION

Statement of the Case

ELEANOR MACDONALD, Administrative Law Judge: This case was heard in Newark, New Jersey, on July 22, 2002. The Complaint alleges that Respondent, in violation of Section 8 (a) (1) and (5) of the Act, laid off its bargaining unit employees, subcontracted unit work without prior notice to the Union and bypassed the Union and dealt directly with employees. The Respondent denies that it violated the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent in November, 2002, I make the following

Findings of Facts

I. Jurisdiction

The Respondent, a corporation with a location in Totowa, New Jersey, engaged in the printing, binding and distribution of print products, performed services valued in excess of $50,000 annually for customers located in States other than the State of New Jersey. I find that at all material times Respondent has been an employer engaged in commerce within the meaning of Section 2 (2), (6) and (7) of the Act and that Local 31, Graphic Communications International Union is a labor organization within the meaning of Section 2 (5) of the Act.

II. Alleged Unfair Labor Practices

A. Background

The Respondent is a commercial book and financial printer. It specializes in printing one or two color reference or information documents that typically have a high page count and are time sensitive materials. The instant case concerns Respondent's Clarkwood location in Totowa, New Jersey. At the time of the material events Respondent also owned a plant in Pennsylvania and it leased a premises in Albany, New York.

The Union has been the designated exclusive collective bargaining representative of a unit of Respondent's employees and it has been recognized by the Respondent in successive collective bargaining agreements, the most recent of which has a term from October 1, 1999 to September 30, 2004. The appropriate unit is:

> All employees of the Employer operating or assisting on printing presses, including letterpress offset, (lithographic) and associated devices. Also, employees employed as offset cameramen, strippers and platemakers, all dark-room work, opaquing and dot etching, porters, utility men and stock handlers in the pressroom, except those employees employed in member shops who are under contract with another recognized union.

On June 18, 1997 the Respondent and the Union entered into a "Letter of Agreement."[1] The Letter Agreement provided that the parties:

> recognize that the Employer is engaged in a highly competitive business and that it has lost major customers in recent years. The Union recognizes that for a number of years the Employer has subcontracted work and has transferred work to its related companies … and that in keeping with the need for managerial flexibility it recognizes that this conduct was and is proper and shall continue to be permitted. The Employer recognizes in light of the above that some protection is warranted against the lose (sic) of permanent jobs as a primary and direct result of subcontracting or transfer of work….
>
> The parties … agree that the Employer shall have the right to:
>
> (a) subcontract work, (b) transfer or relocate work to facilities which it may acquire, or to its related companies, provided that in the event that as a primary and direct result of subcontracting and/or transfer of jobs traditionally done by the Employer at Clarkwood to its related companies, there are permanent layoffs, sixty-five percent (65%) of the number of jobs in the bargaining unit as of the date of this Letter of Agreement shall be preserved from permanent layoffs which are the primary and direct result of such subcontracting or transfer.
>
> (c) transfer or relocate equipment ….
>
> (d) sell its assets or operations.
>
> (e) discontinue or eliminate its operations.

[1] The letter identified the employer as "Clarkwood Division of Lenz & Riecker, Inc." in Totowa, New Jersey.

Steven Riecker was CEO and president of Respondent from March 2000 until May 2002.[2] He is a manager, supervisor and agent of Respondent within the meaning of the Act.

B. Bankruptcy Filings and Layoffs

Riecker testified that beginning in March 2001 Respondent had been trying to find a buyer for the business. By April and May of 2001 the Respondent was incurring losses of $200,000 per week. By July 2001 the Respondent was out of cash and it was negotiating with two or three potential buyers with the object of selling the operating assets immediately and then disposing of the real estate. Respondent wanted to wrap up its operations and pay off its creditors. Management did not have the intention to continue to operate the company. In July 2001 Respondent retained Duane Morris as counsel and on July 13 a creditors' meeting was held. Riecker testified that Counsel for Local 31 attended the meeting. Respondent informed the creditors that it was trying to sell the corporation as a going concern in an orderly liquidation. Some of the creditors asked why Respondent did not shut down immediately. Respondent replied that there had been substantial layoffs in May and June and that the busy season of July, August and September was starting. There was a lot of work in progress and Respondent needed employees to complete the jobs and enable Respondent to bill its customers for the finished products. Respondent had over $3 million in outstanding accounts receivable from those customers and it believed that if it did not complete all the work owing to those clients it would not be able to collect the amounts due. Respondent stressed that it wanted to sell the company as a going concern. At the meeting Riecker told Counsel for the Union that he doubted that unit jobs would be preserved in Totowa.

On August 8, 2001 some of Respondent's creditors filed an involuntary Chapter 7 petition for bankruptcy which would have entailed an immediate shutdown of the plant. Respondent opposed this filing because it believed that it could obtain maximum value from the sale only if the business were still a going concern. On August 30 Respondent filed a voluntary bankruptcy petition under Chapter 11. Respondent hoped to convince its lender, GE Capital Corporation, the creditors' committee and the bankruptcy court to approve debtor-in-possession financing so that Respondent could pursue a sale.[3]

The employees walked off the job on August 30 because Respondent could not fund its payroll. On that day Riecker addressed a memo to the employees informing them that Respondent was hoping to have enough time to sell the company and that it hoped the bankruptcy court would approve the debtor-in-possession financing and thereby approve issuing paychecks to the employees. The memo said, "The bankruptcy court will evaluate offers to purchase all or parts of the company, and some may involve keeping all or some of it's (sic) manufacturing locations operating under new ownership." Riecker told the employees that everyone had to work hard to complete a large volume of work currently in the plant so that Respondent would retain its customers "to keep the company attractive to current or future buyers." He also pointed out that completion of work would help fund paychecks in the coming weeks.

On August 31 the court approved the Respondent's petition under Chapter 11. Riecker testified that pursuant to the terms of the debtor-in-possession financing approved by the court

[2] Reicker had previously worked in various sales and customer service positions for Respondent from 1983 until 1992.

[3] GE Capital had entered into an agreement on July 31, 2000 to provide financing for Respondent.

Respondent had four weeks to sell the company or it would be shut down. GE Capital would not extend further credit after that time.

Riecker testified that potential buyers engaged in discussions with Respondent for deals including the good will and the equipment of Respondent or just the good will. However, Respondent was not successful in finding a buyer within the four week period.[4] The Respondent's losses continued and all the concerned parties wanted the plant to cease operating as soon as possible. On September 26, 2001 Riecker addressed a memo to all employees stating, in relevant part:

> We regret to inform you that due to the decision of a bankruptcy Judge, the Company's plant located … in Totowa, NJ will cease operation. The closure of the plant will occur on or about October 5, 2001 and separations of employment (Layoffs) will commence on September 28, 2001.

On September 27 Riecker sent a letter to Erik Johnson the president of Local 31 repeating the information that the plant would close on or about October 5 and that layoffs would occur beginning September 28. The letter stated:

> The Company offers to negotiate the effects of the closure on the employees your Union represents subject to the Bankruptcy proceeding. Please call Gerry Fields at Lenz & Riecker to schedule a date for such a meeting.

On September 28 some unit employees were given layoff letters. About 15 employees continued to work into the week ending October 5. By the second week of October 2001 the plant employed about two or three people, according to Riecker.

Barry Levinson was the chief financial officer of Respondent from April 2000 until December 31, 2001. Levinson was on the team that negotiated with GE Capital to obtain financing for the company's operations. Levinson prepared a budget for submission to GE Capital. After GE Capital approved the budget submitted by Respondent the budget was submitted to the bankruptcy court for its approval. On August 30 or 31, 2001 Respondent and GE Capital agreed to an amendment of the original agreement with GE Capital that provided funding while Respondent sought to sell the assets. The bankruptcy court approved the financing on August 31. On September 28, 2001 Respondent and GE Capital agreed to another round of funding to wind down the business. As part of this agreement, Respondent prepared an operating budget for the month of October which included payroll for unit members only until October 5. Levinson stated that under the terms of the budget submitted for approval to the court Respondent could not pay unit employees' wages after October 5, 2001. Levinson testified that the lender and the creditors' committee had informed Respondent "as to what they would permit and I was instructed on how to prepare the budget so that it would be approved by the court." Levinson said that Respondent "had no choice" but to prepare the budget in accordance with the wishes of the lender and the creditors' committee.

Levinson testified that when he participated in negotiations with GE Capital and prepared the budget for the period after September 28 he did not include a line item to pay unit employees beyond October 5 because Respondent intended to sub-contract the work. Levinson had known at the end of August that if Respondent did not find a buyer within the next

[4] During the four week debtor-in-possession period the company did not try to sell its real estate.

four weeks it might have to subcontract uncompleted work.

Levinson testified in the bankruptcy court hearing on August 31 in order to gain the court's approval of financing while Respondent sought to sell the business. Levinson informed the court that Respondent intended to ship some equipment to its plant in Pennsylvania and operate it on a non-union basis.

C. Subcontracting

On about October 1, 2001 the Respondent subcontracted bargaining unit work. The subcontracting took place pursuant to an "Agreement to Sub-Contract Printing Work" signed by Riecker and Henry Becker, the president of Interstate Litho Corporation. The Agreement recites the fact that Respondent is a debtor-in-possession. The Agreement provides that Interstate will fulfill the obligations of Respondent to its customers, using Respondent's logo and applicable service marks and trade marks, and that Interstate will invoice the completed and shipped work to Respondent on a COD basis. The Agreement states that it will become effective when so ordered by the bankruptcy court. Levinson testified that the work was sent to be completed at Interstate before Respondent applied to the court to approve the subcontracting arrangement on December 14, 2001. The Agreement was approved *nunc pro tunc* by the bankruptcy court.

Levinson, testified that Respondent had met with Henry Becker of Interstate in an effort to sell him the company's assets including the real estate, machinery and equipment. In fact, Becker bought some equipment from Respondent and he transferred the work to Pennsylvania. Levinson stated that Respondent had hoped to preserve customers who would go with Becker if he were the buyer.

Riecker testified that the subcontracting was a necessary part of the bankruptcy proceedings. He stated that the work was part of the "wind down" of Respondent's operations. A number of jobs in the plant were substantially or nearly substantially completed and Respondent could not complete them. Interstate finished the work so that the jobs could be billed. According to Riecker, Interstate also did some jobs from start to finish. These were jobs that were in Respondent's "pipeline" and the customers could not quickly find another supplier. It made sense for Interstate to do the work and for Respondent to bill the customers. This gave the customers time to find another supplier. Riecker testified that Respondent supplied paper and ink to Interstate from its inventory; thus Interstate did not bill Respondent for the paper and ink it used to complete the jobs. Riecker believed that the subcontracting continued until some time in November 2001. Riecker stated that unit employees could not complete the work because there was no cash to pay them and no approval from the bankruptcy court for the employees to work.

Levinson's testified that Respondent's October operating costs included $55,522 in purchases of paper, ink and materials. He stated that the purchases were made for work that was completed in house. However, Levinson submitted a document to the bankruptcy court that listed this amount under the costs of performing subcontracted work. Levinson also testified that Respondent could not have completed the subcontracted work in-house because it had no money to buy materials and to pay people.

Levinson testified that one reason to subcontract work to Interstate was to avoid potential lawsuits from Respondent's customers if it failed to complete work it had contracted to perform for them. There is no evidence that any such lawsuits were filed.

According to Levinson there were as many as a dozen jobs in the pipeline on September

28 when the first layoff notices went out. Some of the work was to be performed pursuant to contracts entered into as much as one year ago which required jobs to be done on a monthly basis.

Respondent had gross revenues of $354,077 for the month of October 2001 all of which it attributed to the subcontracting arrangement. Respondent paid Interstate $111,220 to perform the work but it lost money on the subcontracting arrangement due to its fixed operating and non operating expenses in October. Thus, it cost Respondent about $500,000 to obtain the $354,077 revenue for the month of October. Levinson testified that although Respondent lost money on the subcontracting he believed that if the work was not completed the company would have been sued for millions by its disappointed customers. Levinson stated that a portion of the income attributed to subcontracting was in fact work performed by Respondent's employees. For example, one project which was billed at $150,000 was 98% complete but had to be bound. The subcontractor charged $9000 to bind the documents. On Respondent's income schedule the entire $150,000 is attributed to subcontracting work.

A few jobs completed by Respondent after the layoffs were very specialized and could not be handled by Interstate. Riecker knew that the work was offered to unit employees but he did not know whether they were paid according to the collective bargaining agreement. Riecker stated that he had heard that pressroom manager Pat Conway offered such work to laid off employees although he did not speak to Conway about this.[5] Riecker did not know whether Conway offered the work pursuant to the terms of the collective bargaining agreement.

Robert Borgstedt testified that he was laid off from his job as a second shift foreman on September 28 or 29, 2001, One or two weeks after his layoff Conway telephoned Borgstedt and asked him to come to the plant and run a job consisting of about 90,000 sheets for which he would be paid in cash. Conway did not tell Borgstedt whether the wages would conform to the collective bargaining agreement. Borgstedt refused the job because he was afraid that he would have difficulty collecting his pay. Conway was not called to testify herein. Levinson testified that no one was ever paid cash by Respondent.

III. Discussion and Conclusions

A. Positions of the Parties

The General Counsel acknowledges that Respondent was in a precarious financial condition and that it had to close its doors. However, General Counsel maintains that Respondent "should have bargained with the Union about the work remaining in the pipeline before it subcontracted it out….." General Counsel points out that Respondent supplied ink and paper to Interstate for the subcontracted work and that Respondent offered work to a unit member on a cash basis. General Counsel concludes that Respondent therefore would have been able to complete the work in-house if it had scheduled the funds to pay unit employees when it submitted a budget to its lender and then the bankruptcy court. According to General Counsel the collective bargaining agreement specifically permits subcontracting only if a fixed percentage of unit jobs are retained. In the instant case, 65% of the employees were not retained and the Respondent was not privileged to contract out the unit work without bargaining with the Union. Finally, General Counsel argues, Respondent was not faced with exigent circumstances such as would allow it to disregard its duty to bargain with the Union.

[5] Levinson also identified Conway as a plant manager.

The Charging Party asserts that Respondent had decided to break up the company and sell the assets with the good will. Respondent intended that the Pennsylvania facility would be sold and operated on a non-union basis. According to the Charging Party Respondent planned to subcontract work to Interstate so that Interstate would have an ongoing concern and would pick up the work once the equipment was brought to Pennsylvania. Respondent's plan was to submit a budget to the bankruptcy court that supported a decision to subcontract; thus, the budget did not provide for the payment of unit employees past October 5. Charging Party urges that Respondent could have submitted a budget to GE Capital and to the bankruptcy court that provided for the payment of wages to unit employees in order to finish the work that was in the pipeline rather than have the work contracted out to Interstate. Charging Party points out that the machinery, paper and ink required to finish the jobs was in the possession of Respondent. Charging Party states that Respondent did not negotiate with the Union about the subcontracting. The collective bargaining agreement says that the employer cannot subcontract work when the unit falls below 65% of its strength. By contracting out and failing to negotiate over this decision, Respondent violated the collective bargaining contract. The contract had not been set aside by the bankruptcy court. It was Respondent's own actions that made it impossible to pay the unit employees past October 5.

The Respondent argues that the subcontracting to Interstate was permitted under the collective bargaining agreement. Respondent relies on Riecker's testimony that in October 2001 there was not a loss of permanent jobs as a direct and primary result of subcontracting. Rather, the loss of permanent jobs was due to plant closing. The Respondent urges that the requirement of collective bargaining is subject to an exception in the case of impossibility. Respondent asserts that in this case no option existed except to lay off all the employees and subcontract work in progress. Respondent further asserts that the employer's reason for subcontracting centered around the scope and direction of the company's future viability and was therefore solely an economic decision. Citing *Dorsey Trailers, Inc. v. NLRB*, 134 F.3d 125, 130 (3d Cir. 1998), Respondent concludes that the decision to subcontract was not subject to mandatory bargaining.

B. Conclusions

The testimony of the witnesses shows that most of the unit employees were laid off on September 28 or 29, but that a number worked in the plant until October 5. Further, unit employees were working past that day according to the testimony of Riecker who stated that by the second week of October the plant employed two or three people. Riecker also testified that the specialized jobs that could not be done by Interstate were offered to unit employees after the layoff. Riecker could not say whether the workers were paid according to the collective bargaining agreement. Borgstedt testified that Conway called and offered him a job for cash one or two weeks after he was laid off. I find that the record conclusively establishes that Respondent continued to perform some work using unit employees after October 5. Although this issue was clearly raised during the presentation of General Counsel's case the Respondent did not take the opportunity to introduce any evidence showing what mechanism was used to pay the employees. It is therefore a fair assumption that Respondent's lender and the bankruptcy court approved the payment of wages to unit members after October 5 and that approval was also obtained for the payment of utilities required to run the jobs.

Riecker testified that the subcontracting to Interstate continued until November. I note that the subcontracting agreement with Interstate was submitted to the bankruptcy court for approval on December 14, 2001 long after most of the work was done and delivered to customers. The subcontracting agreement provides that Interstate will do the work for Respondent on a COD basis. Therefore, funds were available for payment to Interstate long

before the bankruptcy court approved the arrangement in December.

Levinson testified that when he negotiated with GE Capital and prepared the budget for the period after September 28 he knew that the Respondent intended to subcontract unit work and he did not include a line item to pay unit employees. In fact, Levinson testified, he had known at the end of August that if Respondent did not sell the business it might subcontract work. Thus, Respondent was aware before October 5 that it wished to contract out unit work.

The facts discussed above show that GE Capital funded the winding down of the business including work done by unit employees and by subcontractors after October 5. Although Respondent argues that it could not employ unit members after October 5 because it did not have approval from the lender or the bankruptcy court, this was apparently not the case. Indeed, the evidence shows that GE Capital did fund payment of unit members after October 5. And it was apparently not unlawful for Respondent to enter into the subcontracting agreement and make payments to Interstate long before the bankruptcy court had approved the action. Respondent has not shown why, if it could employ a few unit members to finish jobs that could not be done by Interstate after October 5, it could not have employed unit members to finish all the jobs. The evidence shows that Respondent furnished ink and paper to Interstate. Clearly, those materials could have been used in Respondent's own plant.

Respondent argues that its decision to layoff the remaining employees and subcontract unit work is an exception to the duty to bargain based on the doctrine of "impossibility". No witness provided testimony to show why Respondent could not have bargained with the Union concerning its intention to subcontract when it first formed that intention in August. I find that the argument of "impossibility" or "exigent circumstances" is not valid. No circumstances existed which would have prevented Respondent from informing and negotiating with the Union on the subject of laying off employees and contracting out the unit work. I contrast the facts in this case with the facts in cases where there was no money at all left to continue the employer's business and the business closed due to a rapidly developing catastrophe or emergency. *National Terminal Baking Co.*, 190 NLRB 465 (1971); *M & M Transportation Co.*, 239 NLRB 73, 75, (1978); *Raskin Packing Co.*, 246 NLRB 78 (1979). In this case, as shown above, Respondent had access to ink, paper and sufficient funds to pay both unit employees and a subcontractor after October 5. Respondent's argument based on *Dorsey Trailers, Inc.*, v. *NLRB*, 134 F.3rd 125 (3rd Cir. 1998), is not convincing. In that decision the court found that an employer subcontracted unit work in order to avoid losing sales of trucks that the unit employees could not have produced. The court said, "nor was there an adverse impact on the bargaining unit." The court held that the subcontracting was not a mandatory subject of bargaining. In the instant case, Respondent's own evidence shows that unit employees could have done the work in question and there unquestionably was an adverse impact in that unit employees were laid off sooner than they would have been in the absence of the subcontracting. It is not possible to decide whether labor costs were a factor in Respondent's decision to subcontract because the record contains no evidence on this subject.

The language of the 1997 Letter of Agreement is designed to prohibit subcontracting where it would result in a loss of jobs to the extent that 65% of the work force would not be retained. There is no dispute that the Respondent, pursuant to the 1997 Agreement, had the right to sell its assets and operations and discontinue and eliminate its operations. Pursuant to that right most of the work force was laid off at the end of September. The only issue is the layoff of those few employees who might have been kept on to perform the work that Respondent gave to Interstate. Although these employees did not amount to 65% of the work force I find that the letter agreement did not waive their rights to employment. These employees might have been employed for a few weeks more finishing the jobs in the pipeline with the paper

and ink on the premises. When those few employees who might have done the work that Respondent contracted out were laid off, their layoffs were the "direct and primary result of subcontracting" as specified in the Agreement. It is of no moment that their jobs might have lasted but a few weeks longer. Thus the contract prohibited those layoffs which were the direct and primary result of the subcontract with Interstate. I find that the language of the 1997 Letter of Agreement did not privilege Respondent to layoff unit employees while it subcontracted unit work after October 5, 2001.

It is undisputed that Respondent did not give prior notice to the Union of its desire to contract out the work remaining after October 5 and did not bargain over the layoffs of the employees who might have performed that work. I find that Respondent violated Section 8 (a) (1) and (5) of the Act.

Borgstedt's testimony that manager Conway offered him unit work in October but stated that he would be paid cash was uncontradicted on the record. I find that Respondent offered Borgstedt work on terms not consistent with the collective bargaining agreement. Respondent bypassed the Union and dealt directly with bargaining unit employees by offering them bargaining unit work under terms and conditions other than those described in the parties' collective bargaining agreement. Respondent thus violated Section 8 (a) (1) and (5) of the Act.

Conclusions of Law

1. At all material times Local 31, Graphic Communications International Union is the exclusive collective bargaining representative of Respondent's employees in the following unit:

> All employees of the Employer operating or assisting on printing presses, including letterpress offset, (lithographic) and associated devices. Also, employees employed as offset cameramen, strippers and platemakers, all dark-room work, opaquing and dot etching, porters, utility men and stock handlers in the pressroom, except those employees employed in member shops who are under contract with another recognized union.

2. By laying off its employees and subcontracting unit work without notice to and bargaining with Local 31, Graphic Communications International Union, Respondent violated Section 8 (a) (1) and (5) of the Act.

3. By dealing directly with bargaining unit employees and bypassing Local 31, Graphic Communications International Union, Respondent violated Section 8 (a) (1) and (5) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, having unlawfully laid off its employees and subcontracted unit work without notice to and bargaining with the Union, must be ordered to make whole those employees who would have performed the work but for Respondent's unfair labor practices, less any net interim earnings, as prescribed in F.W. Woolworth Co., 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The Respondent, Lenz & Riecker, Totowa, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Laying off its employees and subcontracting unit work without notice to and bargaining with Local 31, Graphic Communications International Union.

(b) Dealing directly with bargaining unit employees and bypassing the Union.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole the employees who would have been assigned the unit work as described in the remedy section above for any loss of earnings and other benefits suffered as a result of the unlawful layoffs.

(b) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents all records relating to the contract with Interstate Litho Corporation, payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its facility in Totowa, New Jersey, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 28, 2001.

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[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[7] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. [*Date*]

_____
Eleanor MacDonald
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union
Choose representaives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT lay off our employees and subcontract unit work without notice to and bargaining with Local 31, Graphic Communications International Union for the following unit of employees:

All employees of the Employer operating or assisting on printing presses, including letterpress offset, (lithographic) and associated devices. Also, employees employed as offset cameramen, strippers and platemakers, all dark-room work, opaquing and dot etching, porters, utility men and stock handlers in the pressroom, except those employees employed in member shops who are under contract with another recognized union.

WE WILL NOT bypass the Union and deal directly with our employees by offering them work under terms and conditions different from those in the collective bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make those employees whole who would have been retained to perform work that was unlawfully subcontracted for any loss of earnings and other benefits, less any net interim earnings, plus interest.

LENZ & RIECKER

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

20 Washington Place, 5th Floor, Newark, NJ 07102-3110

(973) 645-2100, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (973) 645-3784.